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Administration of justice at the United Nations

Draft statute of the United Nations Appeals Tribunal

Text proposed by the Working Group on the Administration of Justice at the United Nations

Article 1

A tribunal is established by the present statute as the second instance of the two-tier formal system of administration of justice, to be known as the United Nations Appeals Tribunal.

Article 2

1. The Appeals Tribunal shall be competent to hear and pass judgement on an appeal filed against a judgement rendered by the United Nations Dispute Tribunal in which it is asserted that the Dispute Tribunal has:

- (a) Exceeded its jurisdiction or competence;
- (b) Failed to exercise jurisdiction vested in it;
- (c) Erred on a question of law;
- (d) Committed an error in procedure, such as to affect the decision of the case; or
- (e) Erred on a question of fact, resulting in a manifestly unreasonable decision.

2. An appeal may be filed by either party (i.e. the applicant, or a person making claims in the name of an incapacitated or deceased applicant, or the respondent) to a judgement of the Dispute Tribunal.

3. The Appeals Tribunal may affirm, reverse, modify or remand the judgement of the Dispute Tribunal. It may also issue all orders necessary or appropriate in aid of its jurisdiction and consonant with this statute.



4. In cases of appeal under article 2, paragraph 1 (e), the Appeals Tribunal shall be competent to:

(a) Affirm, reverse or modify findings of fact of the Dispute Tribunal on the basis of substantial evidence in the written record; or

(b) Remand the case to the Dispute Tribunal for additional factual findings, subject to article 2, paragraph 5, if it determines that further findings of fact are necessary.

5. In exceptional circumstances, and where the Appeals Tribunal determines that the facts are likely to be established with documentary evidence, including written testimony, it may receive such additional evidence if that is in the interest of justice and the efficient and expeditious resolution of the proceedings. Where this is not the case, or where the Appeals Tribunal determines that a decision cannot be taken without oral testimony or other forms of non-written evidence, it shall remand the case to the Dispute Tribunal. The evidence under this paragraph shall not include evidence that was known to either party and should have been presented at the level of the Dispute Tribunal.

6. Where the Appeals Tribunal remands a case to the Dispute Tribunal, it may order that the case be considered by a different judge of the Dispute Tribunal.

7. For the purposes of this article, "written record" means anything that has been entered in the formal record of the Dispute Tribunal including submissions, evidence, testimony, motions, objections, rulings and the judgement, and any evidence received in accordance with article 2, paragraph 5, of the present statute.

8. In the event of a dispute as to whether the Appeals Tribunal has competence under the present statute, the Tribunal shall decide on the matter.

[9. The Appeals Tribunal shall be competent to hear and pass judgement on an application alleging non-observance of the regulations of the United Nations Joint Staff Pension Fund arising out of the decision of the United Nations Joint Staff Pension Board submitted by:

(a) Any staff member of a member organization of the Pension Fund which has accepted the jurisdiction of the Appeals Tribunal in Pension Fund cases who is eligible under article 21 of the regulations of the Fund as a participant in the Fund, even if his or her employment has ceased, and any person who has acceded to such staff member's rights upon his or her death;

(b) Any other person who can show that he or she is entitled to rights under the regulations of the Pension Fund by virtue of the participation in the Fund of a staff member of such member organization.¹

10. The Appeals Tribunal shall be competent to hear and pass judgement on an application filed against a specialized agency brought into relationship with the United Nations in accordance with the provisions of Articles 57 and 63 of the Charter of the United Nations or other international organization or entity

¹ It was proposed that applications alleging non-observance of the regulations of the Pension Fund and applications filed against a specialized agency should be considered by the Dispute Tribunal. It is recommended that, before a decision is taken, the Secretariat be given an opportunity to assess the consequences of this proposal, in consultation with the entities concerned as appropriate.

established by a treaty and participating in the common system of conditions of service, where a special agreement has been concluded between the agency, organization or entity concerned and the Secretary-General of the United Nations to accept the terms of the Appeals Tribunal's jurisdiction, consonant with the present statute. Such special agreement shall provide that the agency, organization or entity concerned shall be bound by the judgements of the Appeals Tribunal and be responsible for the payment of any compensation awarded by the Appeals Tribunal in respect of its own staff members and shall include, *inter alia*, provisions concerning its participation in the administrative arrangements for the functioning of the Appeals Tribunal and concerning its sharing of the expenses of the Appeals Tribunal.]¹

Article 3

1. The Appeals Tribunal shall be composed of seven judges.
2. The judges shall be elected by the General Assembly on the recommendation of the Internal Justice Council in accordance with General Assembly resolution 62/228. No two judges shall be of the same nationality. Due regard shall be given to geographical distribution and gender balance.
3. To be eligible for appointment as a judge, a person shall:
 - (a) Be of high moral character; and
 - (b) Possess at least 15 years of judicial experience in the field of administrative law, or the equivalent within one or more national jurisdictions.
4. A judge of the Appeals Tribunal shall be appointed for one non-renewable term of seven years. As a transitional measure, three of the judges initially appointed, to be determined by drawing of lots, shall serve three years and may be reappointed to the same Appeals Tribunal for a further non-renewable term of seven years. A current or former judge of the Dispute Tribunal shall not be eligible to serve in the Appeals Tribunal.
5. A judge of the Appeals Tribunal appointed to replace a judge whose term of office has not expired shall hold office for the remainder of his or her predecessor's term, and may be reappointed for one non-renewable term of seven years, provided that the unexpired term is less than three years.
- [6. A judge of the Appeals Tribunal shall not be eligible for any appointment within the United Nations, except another judicial post.]²**
7. The Appeals Tribunal shall elect a President and two Vice-Presidents.
8. A judge of the Appeals Tribunal shall serve in his or her personal capacity and enjoy full independence.
9. A judge of the Appeals Tribunal who has, or appears to have, a conflict of interest shall recuse himself or herself from the case. Where a party requests such recusal, the decision shall be taken by the President of the Tribunal.

² A proposal was made for a former judge to be eligible, after a certain period, for a post for which the selection and election and/or appointment is the prerogative of the United Nations Secretary-General. However, there were differing views on how long that ineligibility period should be. See also article 4, paragraph 6, of the statute of the Dispute Tribunal.

10. A judge of the Appeals Tribunal may only be removed by the General Assembly in case of misconduct or incapacity.

11. A judge of the Appeals Tribunal may resign, by notifying the General Assembly through the Secretary-General. The resignation shall take effect from the date of notification, unless the notice of resignation specifies a later date.

Article 4

1. The Appeals Tribunal shall perform its functions in New York. However, it may decide to hold sessions in Geneva or Nairobi as required by its caseload.

2. The Appeals Tribunal shall hold ordinary sessions at dates to be fixed by its rules, subject to the determination of the President that there is a sufficient number of cases to justify holding the session.

3. Extraordinary sessions may be convoked by the President, as required by the caseload.

Article 5

1. The Secretary-General shall make the administrative arrangements necessary for the functioning of the Appeals Tribunal, including provisions for the travel and related costs of staff whose physical presence before the Tribunal is deemed necessary by the Tribunal and for judges to travel as necessary to hold sessions in Geneva and Nairobi.

2. The Registry of the Appeals Tribunal shall be established in New York, consisting of a Registrar and such other staff as necessary.

3. The expenses of the Appeals Tribunal shall be borne by the United Nations.

4. Compensation ordered by the Appeals Tribunal shall be paid by the United Nations Secretariat or separately administered United Nations funds and programmes as applicable and appropriate, or by the specialized agency, organization or entity that has accepted the jurisdiction of the Appeals Tribunal.

Article 6

1. Subject to the provisions of the present statute, the Appeals Tribunal shall establish its own rules of procedure, which shall be subject to approval by the General Assembly.

2. The rules shall include provisions concerning:

(a) Election of the President and Vice-Presidents;

(b) Composition of the Tribunal for its sessions;

(c) Organization of work;

(d) Presentation of submissions and the procedure to be followed in respect thereto;

(e) Procedures for maintaining the confidentiality and inadmissibility of verbal or written statements made during the mediation process;

(f) Intervention by persons not party to the case whose rights may have been affected by the judgement of the Dispute Tribunal and whose rights might therefore also be affected by the judgement of the Appeals Tribunal;

(g) The filing of friend-of-court briefs, upon motion and with the permission of the Appeals Tribunal;

(h) Oral proceedings;

(i) Publication of judgements;

(j) Functions of the Registry;

(k) Procedure for the recusal of judges; and

(l) Other matters relating to the functioning of the Tribunal.

Article 7

1. An appeal shall be receivable if:

(a) The Appeals Tribunal is competent to hear and pass judgement on the appeal, pursuant to article 2, paragraph 1, of the present statute;

(b) The appellant is eligible to file the appeal, pursuant to article 2, paragraph 2, of the present statute; and

(c) The appeal is filed within forty-five days of the receipt of the judgement of the Dispute Tribunal or, where the Appeals Tribunal has decided to waive or suspend that deadline in accordance with paragraph 3 below, within the period specified by the Appeals Tribunal.

[2. For purposes of applications alleging non-observance of the regulations of the United Nations Joint Staff Pension Fund arising out of a decision of the United Nations Joint Staff Pension Board, an application shall be receivable if filed within ninety days from the receipt of the Board's decision.]³

3. The Appeals Tribunal may decide in writing, upon written request by the applicant, to suspend or waive the deadlines for a limited period of time and only in exceptional cases. The Appeals Tribunal shall not suspend or waive the deadlines for management evaluation.

4. Notwithstanding article 7, paragraph 3, an application shall not be receivable if it is filed more than one year after the judgement of the Dispute Tribunal.

5. The filing of appeals shall have the effect of suspending the execution of the judgement contested.

6. An appeal and other submissions shall be filed in any of the official languages of the United Nations.

Article 8

1. The Appeals Tribunal may order production of documents or such other evidence as it deems necessary, subject to article 2 of the present statute.

³ See article 2, paragraph 9, above and the note thereto.

2. The Appeals Tribunal shall decide whether the personal appearance of the appellant or any other person is required at oral proceedings and the appropriate means to achieve that purpose.
3. The judges assigned to a case will determine whether to hold oral proceedings.
4. The oral proceedings of the Appeals Tribunal shall be held in public unless the Appeals Tribunal decides, at its own initiative or at the request of either party, that exceptional circumstances require the proceedings to be closed.

Article 9

1. The Appeals Tribunal may order one or more of the following:
 - (a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Appeals Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered, subject to subparagraph (b);
 - [(b) Compensation;**
 - (c) Interest; or**
 - (d) Costs.]⁴**
- [2. Where the Appeals Tribunal determines that a party has manifestly abused the appeals process, it may award costs against that party.]⁵**
3. The Appeals Tribunal shall not award exemplary or punitive damages.
4. At any time during the proceedings, the Appeals Tribunal may order an interim measure to provide temporary relief to either party to prevent irreparable harm and to maintain consistency with the judgement of the Dispute Tribunal.
- [5. Where the Appeals Tribunal decides to remand a case to the Dispute Tribunal pursuant to article 2, it may also decide to grant compensation for the procedural delay, which is not to exceed the equivalent of three months' net base salary.]⁶**
6. The Appeals Tribunal may refer appropriate cases to the Secretary-General or executive heads of separately administered United Nations funds and programmes for possible action to enforce accountability.

Article 10

1. Cases before the Appeals Tribunal shall normally be reviewed by a panel of three judges and shall be decided by a majority vote.
2. Where the President or any two judges sitting in a particular case consider that the case raises a significant question of law, at any time before judgement is

⁴ See article 10, paragraph 5 (b), (c) and (d) of the statute of the Dispute Tribunal and the note thereto.

⁵ See article 10, paragraph 6 of the statute of the Dispute Tribunal and note thereto.

⁶ For consideration by the Fifth Committee.

rendered, the case may be referred for consideration by the whole Appeals Tribunal. Quorum in such cases shall be five judges.

3. The judgements of the Appeals Tribunal shall be issued in writing and shall state the reasons, facts and law on which they are based.
4. The deliberations of the Appeals Tribunal shall be confidential.
5. The judgements of the Appeals Tribunal shall be binding upon the parties.
6. The judgements of the Appeals Tribunal shall be final and without appeal, subject to the provisions of article 11 of the present statute.
7. The judgements of the Appeals Tribunal shall be drawn up in any of the official languages of the United Nations, in two originals, which shall be deposited in the archives of the United Nations.
8. A copy of the judgement shall be communicated to each party in the case. The applicant shall receive a copy in the language in which the appeal was submitted unless he or she requests a copy in another of the official languages of the United Nations.
9. The judgements of the Appeals Tribunal shall be published, while protecting personal data, and made generally available by the Registry of the Tribunal.

Article 11

1. Subject to article 2, either party may apply to the Appeals Tribunal for a revision of a judgement on the basis of the discovery of a decisive fact which was, at the time the judgement was rendered, unknown to the Appeals Tribunal and to the party claiming revision, always provided that such ignorance was not due to negligence. The application must be made within thirty days of the discovery of the fact and within one year of the date of the judgement.
2. Clerical or arithmetical mistakes, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Appeals Tribunal either on its own motion or on the application of any of the parties.
3. Either party may apply to the Appeals Tribunal for an interpretation of the meaning or scope of the judgement.
4. Where the judgement requires execution within a certain period of time and such execution has not been carried out, either party may apply to the Appeals Tribunal for an order for execution of the judgement.

Article 12

The present statute may be amended by decision of the General Assembly.